92-1578

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

WILL KNEDLIK,

Petitioner,

v.

JANET BLUMBERG,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

WILL KNEDLIK, *Pro Se*
2025 Rose Point Lane
Kirkland, WA 98033
(206) 822-1342

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the failure of the state Supreme Court to reverse and to remand for a new trial, as therein requested by Petitioner, rested on an impermissible decision respecting the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution that conflicts with applicable decisions of this Court – in light of the trial court having required petitioner, as a *pro se* defendant in litigation involving interests specifically protected by such provision of the U.S. Constitution, to defend his property and other critical rights throughout a seventeen-day trial, between September 28, 1990 and October 26, 1990, even though petitioner (1) had been in a serious automobile accident on September 10, 1990, (2) was repeatedly required during such trial to take and to be under the influence of a codeine-based narcotic drug in order to control severe physical pain, and (3) could not even "tell time" as late as his closing argument, and even though the trial court (1) was informed before trial in writing of such physical and drug-related problems by his physician by means of his motion to postpone the trial for 82 days, and (2) chastised him from the bench during trial for his repeated failures to respond coherently to judicial directions due to being under the obvious influence of such prescribed narcotic drug.

2. Whether a grant by the state Supreme Court of $2,500 in sanctions against Petitioner – in the nature of those imposed pursuant to Fed. R. Civil P. 11 – for having brought an appeal seeking reversal and remand for a new trial under such circumstances conflicts with applicable due process decisions of this Court.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are petitioner Will Knedlik and respondent Janet Blumberg.

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No. _____

In The

Supreme Court of the United States

October Term, 1992

WILL KNEDLIK,

Petitioner,

v.

JANET BLUMBERG,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

Will Knedlik, petitioner *pro se*, respectfully prays that a writ of certiorari be issued to review the decision of the Supreme Court of the State of Washington entered in this case on December 24, 1992.

OPINIONS BELOW

The state Supreme Court Commissioner's Ruling Granting Motion on the Merits, filed on October 23, 1992, is printed as Appendix A. The state Supreme Court's Order, signed by the Chief Judge during December, 1992 (but incompletely dated), is printed as Appendix B. The

state Supreme Court's Mandate, dated January 23, 1993 and indicating review of the case to have been terminated by entry of such Order as of December 24, 1992, is printed as Appendix C.

JURIDSICITION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amendment XIV, § 1, sentence 2.

STATEMENT OF THE CASE

Pursuant to Washington state law, respondent and petitioner, formerly wife and husband, executed a statutory separation contract drafted by her legal counsel on June 30, 1988 indicating their "elect[ion] to live separate and apart without any court decree," R.C.W. 26.09.070(2), dividing their property, and establishing certain other terms and conditions of their legal separation; and her

attorney filed such statutory separation contract of public record on July 1, 1988.

Over fourteen months later, on September 7, 1989, respondent's counsel filed an amended petition for dissolution seeking to void the statutory separation contract which he had drafted on numerous bases, and petitioner began to defend such amended petition *pro se*.

A year and three days later, on September 10, 1990, petitioner was injured in a serious automobile accident shortly before trial was scheduled to commence on said amended petition. As a result, in order to control severe pain, petitioner was required to take a codeine-based narcotic drug, which was prescribed by his treating physician, and which adversely affected his cognitive functions.

As a consequence, petitioner moved for leave to postpone the trial for 82 days – so that he could defend his property and other constitutionally-protected interests at trial unaffected by adverse influences of the narcotic drug required to control his pain. In support of such motion, petitioner submitted a written statement by his physician – dated September 17, 1990 and received by the trial court on September 18, 1990 – indicating: "He is needing to rest periodically, has intermittent problems with concentration, as well as dealing with severe pain. He has required narcotic analgesics to control the pain intermittently." Such statement further indicated that such prescribed narcotic drug "would affect his ability to concentrate for appearances in court or for other work."

Notwithstanding this information being specifically provided to the trial court, the Presiding Judge refused to

allow any change from the initial trial schedule, and required petitioner – as a *pro se* party – to defend his property and other rights as soon as a trial judge could be found to hear the case in light of then-existing court congestion.

A seventeen-day trial commenced on September 28, 1990. During the entire period of such trial, petitioner was repeatedly required to take and to be under the influence of a codeine-based narcotic drug in order to control severe physical pain, was chastised from the bench throughout the trial for his repeated failures to respond coherently to judicial directions while under the influence of said prescribed narcotic drug, and, as late as his closing argument on October 26, 1990, could not even accurately "tell time."

The trial court voided the parties' statutory separation contract on December 7, 1990, and petitioner appealed on several grounds – including violation of his federal-and-state due process rights by virtue of his "not be[ing] reasonably able to defend himself and his property since he would be under the influence of a narcotic drug prescribed to control pain," Assigned Error 12, and of the trial court's "[r]equiring or allowing [petitioner] to attempt to conduct his defense while under the influence of a narcotic drug during trial, despite trial court notice that [petitioner] was unable to maintain focus during cross-examination, his direct testimony and responses to cross-examination repeatedly; to understand directions by the trial judge on occasion; or even to tell time in his closing [argument]," Assigned Error 15, *inter alia*.

Without dealing directly with any of petitioner's assignments of error as to such federal-and-state due

process violations, the state Supreme Court declined to remand for a new trial, and instead entered an Order on December 24, 1992 granting respondent's motions for dismissal of petitioner's appeal, and for sanctions against petitioner for having pursued his appeal under such circumstances implicating violations of the U.S. Constitution.

REASONS FOR GRANTING THE WRIT

A writ of certiorari should issue herein for two fundamental reasons.

First, as interpreted by this Court, the Fourteenth Amendment clearly requires every judicial proceeding to provide a *meaningful* opportunity for all parties to be heard. Equally clearly, there can be no *meaningful* opportunity to be heard if a party, who is defending his property and other crucial Fourteenth Amendment interests *pro se*, is forced into a futile attempt to defend such constitutionally-protected rights while under the influence of a physician-prescribed narcotic drug required in order to control severe pain and, hence, is unable to follow what is going on in court. While trial-by-ordeal considerably antedates both our Constitution and its Fourteenth Amendment, it has been superseded for centuries.

Second, given this case's circumstances, guidance appears to be required to assist courts in balancing their legitimate interest in employing calendar-control techniques for managing serious court congestion problems at all levels of state trial courts, on the one hand, against the explicit constitutional rights of litigants, on the other hand. This appeal affords a fully appropriate vehicle.

Court congestion cannot be gainsaid, of course. The problem has existed for over two decades now, is real and is continuing. Further, recognition of the benefits from "caseflow management" has grown since publication of CASEFLOW MANAGEMENT IN THE TRIAL COURT (1973). Nonetheless, when a court forces a particular case to flow even under circumstances which preclude a litigant from obtaining a fundamentally fair hearing, then such judicial administration can and does violate the U.S. Constitution's Fourteenth Amendment. This is such a case.

While "[f]or all its consequences, 'due process' has never been, and perhaps can never be, precisely defined," *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 24, 68 L.Ed.2d 640, 101 S.Ct. 2153 (1981), the simple fact is that there can be no doubt that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 308 U.S. 545, 552, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965)." *Mathews v. Eldridge*, 424 U.S. 319, 333, 47 L.Ed.2d 18, 96 S.Ct. 893 (1976). Nor can there be any doubt that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clauses of the Fifth or Fourteenth Amendment." *Mathews* at 332.

Thus, in *Lassiter* at 27, this Court refined its "net weight" approach for balancing the three elements which it had articulated, in *Mathews*, to require judicial

> evaluat[ion] in deciding what due process requires, viz., the private interests at stake, the government's interests, and the risk that the

procedures used will lead to erroneous decisions.

Further, also relevant herein, this Court noted in *Lassiter* at 28 that, "as our adversary system presupposes, accurate and just results are most likely to be obtained through the equal contest of opposed interests," and cautions regarding circumstances wherein "the contest of interests may become unwholesomely unequal."

In this instance, the trial court's refusal to continue trial for 82 days – so that petitioner could defend key interests absent serious impediments from a narcotic drug – was actively encouraged by counsel for respondent, who opposed petitioner's motion in order to obtain obvious advantages at trial over an impaired adversary. However, even if such conduct by counsel is completely disregarded, the core fact nonetheless remains that respondent's understandable interest in avoiding a brief delay of trial on her amended petition (and, thus, in resolution of the parties' property dispute) and the trial court's legitimate interest in avoiding deviations from its trial calendar (as a basic element of its case-management program) must pale in comparison both with petitioner's constitutionally-protected due process right to be heard "at a meaningful time and in a meaningful manner," *Armstrong* at 552 (rather than to be forced into a futile attempt to defend his property and other fundamental interests while unable to maintain normal cognitive functions as a result of being under the influence of a prescribed narcotic drug), and also with the judiciary's responsibility to insure against the risk of "erroneous decisions," *Lassiter* at 27 (from forcing a party into a futile effort to defend his property and other constitutionally

protected interests while under the influence of a prescribed narcotic drug).

As this Court has noted: "In its Fourteenth Amendment, our Constitution imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair," *Lassiter* at 33, and application of the due process clause therefore requires the judiciary to "discover what 'fundamental fairness' consists of in a particular situation," *Lassiter* at 25. While this Court is clearly correct that the process is often a somewhat "uncertain enterprise," *Lassiter* at 24, there can be little dispute that the legitimacy of the judiciary will be severely jeopardized if state trial courts allow a lesser standard for determining "fundamental fairness" with respect to the Fourteenth Amendment's due process guarantee than the "norm" for the average school yard – where requiring a combatant to defend himself "with one arm tied behind his back" has never been considered to constitute anything like an equal contest.

Clearly, then, requiring a litigant to defend himself while he is forced, for indisputable medical reasons, to be using a narcotic drug will not pass muster even by ordinary "school yard" practices, much less by the high standards of the Constitution of the United States and of its seminal Fourteenth Amendment.

Likewise, imposition of Rule 11 sanctions against petitioner for merely seeking a new trial under such egregious circumstances itself constitutes such a fundamental *un*fairness that a further violation of his federal due process rights is also implicated.

CONCLUSION

Admittedly, at first blush, questions such as those presented by the instant petition would normally be viewed as merely administrative matters. Indeed, absent egregiousness approaching the dimensions of that in evidence in this case, such issues would not ordinarily rise to constitutional stature. However, given untoward realities of state court congestion today, inadequate legislative provision of resources for the judiciary now and into the foreseeable future, and the zeal of some state court administrators to compel cases to flow mechanically forward, deprivation of the "fundamental fairness" that is at the heart of federal due process guarantees can result – as indicated by the facts herein.

Thus, because pressures on state courts are likely to grow greater proportionally as resources become even smaller proportionally, a clear resolution of those questions presented herein by this Court is important, and Petitioner urges this Honorable Court to issue a writ of certiorari to review the decision entered below in this matter.

Respectfully submitted, this 23rd day of March, 1993.

WILL KNEDLIK, *Pro Se*
2025 Rose Point Lane
Kirkland,WA 98033
(206) 822-1342

APPENDIX A

THE SUPREME COURT OF WASHINGTON

JANET KNEDLIK, Respondent, v. WILL KNEDLIK, Appellant.	NO. 57856-7 RULING GRANTING MOTION ON THE MERITS

Will Knedlik appeals directly to this court from a decree of dissolution, findings of fact and conclusions of law, and a parenting plan and order for child support, all entered by the King County Superior Court on December 10, 1990. By second, third, and fourth notices he also appeals later orders awarding attorney fees, denying posttrial motions, and, most recently, an August 12, 1992 order granting additional legal fees to Respondent Janet Blumberg (formerly Janet Knedlik). Following a protracted period during which the massive record was assembled and transmitted, Mr. Knedlik filed his opening brief on May 19, 1992. Ms. Blumberg responded with a motion on the merits under RAP 18.14(e). I have now studied those pleadings and the record, and have heard oral argument. Except as to the appeal from the August 12, 1992 order, which is too recent to have been discussed in either the brief or the motion, I conclude the appeal is clearly without merit. Therefore, pursuant to RAP 18.14, the trial court orders appealed from by the first three notices are affirmed. The Clerk shall establish a schedule for the separate perfection of the appeal from the August 12, 1992 order.

In determining whether an appeal is clearly without merit, I am to consider "all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court." RAP 18.14(e)(1). Each of the issues raised by Mr. Knedlik falls within one of these categories.

Will Knedlik and Janet Blumberg were married in 1967. They have one child, Caleb, born in 1985. They separated when Ms. Blumberg took Caleb and moved out of the home in May of 1988. Ms. Blumberg filed her original petition for dissolution of marriage on June 10, 1988. On June 30 the parties signed a property settlement agreement, a proposed parenting plan, and a permanent mutual restraining order. Those attempts to negotiate the termination of the relationship did not hold, however, and on September 7, 1988 Ms. Blumberg filed an amended petition for dissolution. In that petition she alleged, among other things, that she had been physically and emotionally abused by Mr. Knedlik during the marriage. She further alleged that Mr. Knedlik had misrepresented the extent of the marital assets and had thereby managed in negotiating the property settlement agreement to obtain for himself about 90 percent of those assets. Ms. Blumberg asked the court in the amended petition to rescind the agreement and make a fair and equitable division of the marital assets. She also requested the court to review and modify as appropriate the parenting plan, to establish child support, and to award her attorney fees.

A dispute-filled period of discovery followed, during which Ms. Blumberg's counsel sought to ascertain the true nature and extent of the marital assets. These efforts culminated in a series of motions and cross-motions shortly before trial, with apparently extensive hearings before a family court commissioner on August 23-24 and September 6, 1990. Each of those hearings resulted in findings detailing numerous failures by Mr. Knedlik to respond to proper discovery requests. Indeed, the court described Mr. Knedlik's general course of litigation conduct in exceptionally strong terms:

> [T]he court finds that respondent [Mr. Knedlik] has consistently, systematically, deliberately and wrongfully delayed petitioner's rightful access to both proper interrogatory answers and discovery of appropriate documents and materials. The court finds that the respondent has engaged in one of the most egregious examples of obstreperous behavior regarding discovery that has been witnessed in this courtroom. The court finds there is significant evidence of obfuscation and manipulation by the respondent in withholding appropriate discovery from the petitioner.
>
> . . .
>
> The court finds that the obstructive and manipulative tactics of the respondent have significantly delayed petitioner in obtaining discovery and have increased the attorney's fees of the petitioner significantly, . . .
>
> . . .
>
> [T]he court finds that respondent has engaged in obfuscation and intransigent conduct and

> behavior in a willful manner, all with the dual purposes of both delaying discovery and refusing to disclose to petitioner highly relevant facts pertinent to assets presently held by respondent.

Findings of Fact 14, 16, and 19, Order re Discovery and Sanctions, August 28, 1990. As a result of this behavior the court imposed $5,000 in sanctions, awarded Ms. Blumberg attorney fees in connection with the discovery motions, and gave specific directions for further discovery. Finally, in an Order to Compel filed September 11, 1990, the court limited Mr. Knedlik's presentation of evidence at trial by directing that he could call no witnesses except himself, could testify only on matters about which he had provided discovery, and could introduce no exhibits other than documents which had been provided to Ms. Blumberg's counsel by September 6.

Trial commenced on September 18 [sic], 1990 and continued for 16 days. The court entered its principal findings of fact and conclusions of law on December 10, 1990, and supplemental findings and conclusions on attorney fees on January 2, 1991. The findings pertinent to this appeal can be summarized briefly as follows:

Mr. Knedlik physically, mentally, and emotionally abused Ms. Blumberg through the course of their marriage. Finding of Fact 9. Ms. Blumberg as a result suffered from Battered Women's Syndrome, continuing until well after she left the family home. Finding of Fact 10. This condition and her attendant fear of Mr. Knedlik, whom she believed not only to be dangerous but also to be a very powerful person within the legal system, rendered her incapable of freely and voluntarily entering into the June 30, 1988 property settlement agreement. Findings of

Fact 11, 12, and 13. This was so notwithstanding that she was represented by her own attorney at that time. Finding of Fact 14.

Mr. Knedlik handled and controlled all the significant financial transactions during the marriage, and Ms. Blumberg's knowledge of community financial matters was limited and incomplete. Finding of Fact 15. When the property settlement agreement was executed, Mr. Knedlik had not disclosed to Ms. Blumberg or her attorney the true nature and extent of the community assets (totaling some $1,400,000), but rather had inaccurately led them to believe that community liabilities approximately equalled community assets. Findings of Fact 16 and 21.

Based on these and other findings the court concluded that the September 30, 1988 property agreement was procedurally unfair and unconscionable, and further that Mr. Knedlik had failed to fulfill various obligations imposed on him by the agreement. Conclusions of Law 4, 5, and 6. The court therefore vacated the property settlement agreement. Conclusion of Law 7. The court instead distributed the marital assets in a manner which awarded each party a nearly equal share ($708,300 to Mr. Knedlik and $714,000 to Ms. Blumberg). Finding of Fact 21. The court also approved Ms. Blumberg's proposed parenting plan, Conclusion of Law 10, and separately entered an order for child support. CP. 402-05.

In its January 2, 1991 findings, conclusions, and order on attorney fees, the court found that but for Mr. Knedlik's obstructive and intransigent behavior the 16-day trial could have been completed in 5 or 6 days, Finding of Fact 1, and in particular that Mr. Knedlik's

failure to disclose information about community assets and his postseparation transactions involving those assets caused Ms. Blumberg's attorney fees to be dramatically and significantly higher than they would otherwise have been. Finding of Fact 5. Of a total of $133,000 attorney fees incurred by Ms. Blumberg, the court awarded $73,685 to be paid by Mr. Knedlik.

The principal difficulty in dealing with Mr. Knedlik's appeal comes from the sprawling and often rhetorical nature of his appellant's brief, which at best only marginally observes the applicable court rules. Mr. Knedlik initially lists 39 assignments of error. Most of those are couched in such argumentative language, and with such incomplete or obscure cites to the record, that it is impossible to identify the specific trial court actions that were supposedly in error. Contrary to RAP 10.3(g), the brief assigns error to findings of fact and conclusions of law in batches. Nowhere in the brief, contrary to RAP 10.4(c), are the challenged findings or conclusions set out verbatim.

The 14 issues which supposedly pertain to the assignments of error are, for the most part, similarly unhelpful generalities, such as "whether principles of statutory and contractual interpretation apply." Moreover, the brief's argument section – nearly 50 pages in length – fails to track those issues in any comprehensible fashion. Indeed, on some issues and assignments of error the brief contains no discernible argument.

In light of these findings, the only way to approach Mr. Knedlik's appeal is to attempt to follow the text of his

argument through its various points, addressing each portion in turn.

Mr. Knedlik first challenges various aspects of the pretrial discovery process, the sanctions imposed by the family court commissioner, and, apparently, the denial of a continuance of the trial date. Appellant's Brief at 14-18. Most of the factual claims on these points, however, are unsupported by any citation to the record. Mr. Knedlik also ignores the extensive findings, some of which are quoted above, entered when the commissioner imposed sanctions for discovery abuses. In any event, supervision of discovery and pretrial proceedings is entrusted to the discretion of the trial court. *Howell v. Blood Bank*, 117 Wn.2d 619, 629-30, 818 P.2d 1056 (1991). Mr. Knedlik has made no showing that that discretion was abused here.

Mr. Knedlik next challenges the trial court's decision to invalidate the parties' original property settlement agreement. Appellant's Brief at 19-37. This challenge is both factual and legal, and takes various forms. Mr. Knedlik begins this portion of his argument by noting that this state now has a "no fault" system of divorce. He suggests it is therefore "anomalous" to consider spousal abuse, a form of fault "apparently present in an absolute majority of marriages," as a factor in determining the validity of a separation contract. Appellant's Brief at 23. His next paragraph concedes the legal point, however, admitting that "there clearly could be instances in which abuse, overreaching or other misconduct was so egregious that a separation contract would be appropriately voided. . . . " *Id.*

Mr. Knedlik next gives a brief nod, in a footnote, to RCW 26.09.070(3). That statute, which the trial court employed here in considering the validity of the property settlement agreement, provides, in part, that

> [i]f either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage, . . . the contract . . . shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevent evidence . . . , that the separation contract was unfair at the time of its execution. . . .

Mr. Knedlik does not directly address this statute at this point. Rather, he turns to cases dealing with prenuptial agreements. Relying on doctrine developed in those cases, Mr. Knedlik proposes that when asked to invalidate an agreement the court must apply a two-pronged analysis. The first inquiry is whether the agreement makes fair and reasonable provision for both parties. If so, the analysis ends. If not, the court goes on to consider whether assets have been fully disclosed, and whether the spouse challenging the agreement entered into it voluntarily with full knowledge of his or her rights. *See In re Marriage of Matson*, 107 Wn.2d 479, 482-83, 730 P.2d 668 (1986). Mr. Knedlik discusses these points separately as "substantive unfairness" and "procedural unfairness."

It is not altogether clear that consideration of separation agreements under RCW 26.09.070(3) requires this sort of two-step analysis. For example, the Court of Appeals has construed the statute to make the economic circumstances of the parties, which would otherwise

seem a major component of "substantive" fairness, relevant only to the extent it pertains to the "procedural" inquiries about full disclosure and voluntariness. *In re Marriage of Shaffer*, 47 Wn. App. 189, 193-95, 733 P.2d 1013 (1987).

Whether using *Shaffer* or the two-step analysis proposed by Mr. Knedlik, however, the trial court's decision to invalidate this settlement agreement is plainly sustainable. The agreement left Ms. Blumberg with cash and property valued at only about $150,000 from community assets of over $1,400,000.[1] When she entered into the agreement, Ms. Blumberg had no clear notion of the extent of the parties' assets. To the contrary, Mr. Knedlik had failed to disclose information regarding community assets either to her or her attorney, and had led her to believe that their community liabilities approximately equalled those assets. Findings of Fact 15 and 16. Additionally, Ms. Blumberg's psychological condition as a battered woman, and her attendant fear of Mr. Knedlik, meant that she did not freely and voluntarily enter into the agreement and was, in fact, incapable of doing so. Findings of Fact 9, 10, 12, 13, and 14. These findings fully support the trial court's conclusions that the agreement was not only unfair but unconscionable. Conclusions of Law 2, 3, 4, and 6.

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[1] In addition to $75,000 cash (payable over 12 months), she received her accrued pension benefits, a 1980 Volvo, miscellaneous personal property, and the rights to her unpublished murder mystery. CP. 10-13. The trial court subsequently assigned values of $64,000 to the pension, $500 to the car, $4,000 to the personal property, and nothing to the unpublished novel. Finding of Fact 21; Nov. 8, 1990 RP. 14.

Mr. Knedlik's [sic] would avoid this result essentially by recasting the facts, to a version in which he was the party coerced to sign the settlement agreement and Ms. Blumberg was his oppressor. The problems with this approach, however, are insurmountable. Throughout the brief, few of the facts recited by Mr. Knedlik are supported by citations to the record. The citations he does provide are, to put it charitably, disingenuous.[2] Even more importantly, the findings that the trial court entered are amply supported by testimony and documentary evidence; Mr. Knedlik does not and cannot seriously suggest to the contrary.

Mr. Knedlik's brief (pp. 38-42) next urges several reasons why the initial property settlement agreement

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[2] An example is this passage from page 12 of Appellant's Brief:

> At every stage of this process, Dr. Blumberg had access to and in fact utilized expert matrimonial counsel; all documents were drafted by her lawyer; and all such documents were explained to her by, signed in the office of, and witnessed by her counsel, who was then also a notary public. CP 6.
>
> Both parties and Dr. Blumberg's lawyer were aware that, due to religious belief, Knedlik had no experience with matrimonial law, was not represented by counsel, accepted all terms demanded by Dr. Blumberg and her lawyer, and relied on him for the accuracy of those representation[s] made by him. CP. 9-40.

CP. 6 is Ms. Blumberg's form verification on her petition for dissolution. It shows that her counsel was a notary, but nothing more. CP. 9-40 contain only the original settlement agreement, proposed parenting plan, and mutual restraining order. Those documents support none of Mr. Knedlik's characterizations.

should essentially be unreviewable. On this tack he first proposes that this case simply does not fall within RCW 26.09.070(3), quoted above, because Ms. Blumberg's petition for dissolution of the marriage was filed *before* the separation contract was executed, not "at the time of the execution . . . or at a subsequent time." He concludes that this separation agreement thus falls under RCW 26.09.070(2) rather than (3) and cannot be invalidated. This argument has no merit.

Subsection (2) of the statute concerns recording and publishing notice of separation agreements between spouses who are not dissolving their marriage. It simply has no application here. More significantly, Mr. Knedlik's strained and overly literal reading of subsection (3) would make it inapplicable to most of the situations it is plainly intended to cover. The obvious and logical intent of the statute is to encourage parties in the process of dissolving a marital relationship to make agreements to settle their own affairs, and to define the dissolution court's role in reviewing those agreements. As this court has repeatedly made clear:

> General rules of statutory construction require that we interpret the statute in a manner that best advances the perceived legislative purpose. *Wichert v. Cardwell*, 117 Wn.2d 148, 151, 812 P.2d 858 (1991). Unlikely, absurd or strained results are to be avoided. *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987); *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990). The spirit and intent of the statute should prevail over the literal letter of the law. *Wichert*, at 151; *State v. Keller*, 98 Wn.2d 725, 728, 657 P.2d 1384 (1983).

Morris v. Blaker, 118 Wn.2d 133, 143, 821 P.2d 482 (1992). Subsection (3) of RCW 26.09.070 must be construed to apply to a separation contract entered into either before a petition for dissolution is filed or while such a petition is pending. *See also* RCW 26.09.070(4), authorizing the court in a dissolution action to dispose of the parties' property if it finds that a separation contract "was unfair at the time of its execution."

The applicability of RCW 26.09.070(3) also disposes of Mr. Knedlik's contention that the agreement here must be enforced as a compromise and settlement: the statute itself provides that agreements will not be enforced in some circumstances. Nor can Mr. Knedlik avoid this result by his alternate characterization of the agreement as a "valid deed." Though the agreement uses the term "quitclaim," it simply does not contain the requisites of a deed. RCW 64.04.020, .050.

One final point on the enforcement of the property settlement agreement: Mr. Knedlik presents no argument to challenge the trial court's finding and conclusion that he himself did not perform numerous obligations undertaken by him in that agreement. Finding of Fact 19, Conclusion of Law 5.

Mr. Knedlik heads the next portion of his brief (pp. 42-47) "The Trial Court Failed to Characterize, Value, and Divide the Property Correctly." Again his position depends on a version of the facts which is at odds with the trial court's findings, and again he provides no citations to the record to support that version. "A trial court has considerable discretion in making a property division and will not be reversed on appeal absent a showing of

manifest abuse." *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). The record here demonstrates that the trial court gave careful and extensive consideration to the property division. There was no abuse of discretion.

Mr. Knedlik entitles the next portion of his brief (pp. 47-61) "Evidentiary Errors." This section does not concern any trial court rulings on evidentiary questions, however, but rather continues Mr. Knedlik's challenge to the trial court's rejection of his version of the facts. As noted above, the court's findings are amply supported by the evidence.[3]

On page 61 of his brief, Mr. Knedlik presents a three-line argument that the trial court entered its findings and conclusions without the 5-day notice required by CR 52(c). If Mr. Knedlik ever raised this point to the trial court, he does not cite his objection and I have not found it. The argument is frivolous.

As his last argument Mr. Knedlik claims vaguely that the trial court did not properly consider Caleb's welfare because it did not inquire into his allegations, apparently made in pretrial, that Ms. Blumberg exposed Caleb to "illegal drug use and other harmful conduct." Mr. Knedlik does not relate his argument to the parenting plan adopted by the trial court, nor has he otherwise

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[3] A particular target of this part of Mr. Knedlik's brief is the finding that he abused his spouse, and the expert testimony on this question by Dr. Laura Brown. Dr. Brown's qualifications are impressive; her testimony was precise and detailed. The court plainly was entitled to accept and credit her opinions.

challenged that plan in his brief. Since he has requested no relief, none could be afforded.

Finally, I note that Mr. Knedlik has directed no argument whatsoever to the trial court's January 2, 1991 findings, conclusions, and order on attorney fees or its later orders on various posttrial motions. Assignments of error that are neither argued nor briefed are deemed waived. *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992).

In sum Mr. Knedlik's appeal in clearly without merit as to the various trial court orders referenced in his first three notices of appeal. Those orders are therefore affirmed. Perfection of the review sought by the recently-filed fourth notice of appeal will proceed separately from this point.

Ms. Blumberg also seeks an award of her appellate attorney fees as a sanction against Mr. Knedlik. She argues that he has taken this appeal solely for purposes of delay, that he submitted an improper brief, and that the appeal is frivolous. RAP 18.9(a), (c); RAP 10.7. Though I agree that many of the issues raised by Mr. Knedlik are frivolous, I do not believe the appeal in its entirety can be so characterized. I thus decline to award Ms. Blumberg a sanction measured by her attorney fees. *See Biggs v. Vail*, 119 Wn.2d 129, 830 P.2d 350 (1992). I do agree, however, that some sanction is appropriate for that portion of the appellate delay attributable to Mr. Knedlik, and for the necessity to respond to a brief that did not comply with the applicable rules. *See Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 224-25, 829 P.2d 1099 (1992). Ms.

Blumberg is awarded sanctions against Mr. Knedlik in the amount of $2,000.00

/s/ Illegible
COMMISSIONER

October 23, 1992

APPENDIX B

THE SUPREME COURT OF WASHINGTON

JANET KNEDLIK,	)	ORDER
Respondent,	)	NO. 57856-7
v.	)	
WILL KNEDLIK,	)	
Appellant.	)	

This matter came before Department II of the Court of its December 1, 1992, Motion Calendar on Appellant's Motion to Modify Commissioner's Ruling and Respondent's Motion for Sanctions. Department II having considered the motions and the files herein;

Now, therefore, it is hereby

ORDERED:

That Appellant's Motion to Modify Commissioner's Ruling is denied. Respondent's Motion for Sanctions is granted. Sanctions in the amount of $500.00 should be paid by the Appellant, Will Knedlik, to the Respondent, Janet Knedlik. If the Clerk of the Supreme Court does not receive verification by December 21, 1992, of payment to the Respondent of the $500.00 terms imposed in this order and the $2,000.00 terms previously imposed by the Supreme Court Commissioner, the Clerk shall transmit this order to King County Superior Court and direct the entry of a Judgment against the Appellant, Will Knedlik, in the amount of $2,500.00.

Dated at Olympia, Washington this ___ day of December, 1992.

/s/ Fred H. Dore
CHIEF JUSTICE

APPENDIX C

THE SUPREME COURT OF WASHINGTON

JANET KNEDLIK, Respondent, v. WILL KNEDLIK, Appellant.	MANDATE No. 57856-7 King County No. 883043624

THE STATE OF WASHINGTON TO:: The Superior Court of the State of Washington in and for King County.

This is to certify that the Ruling Granting Motion on the Merits of the Supreme Court of the State of Washington filed on October 23, 1992, became the decision terminating review of this court in the above entitled cause on December 24, 1992. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: no cost bills having been timely filed, costs are deemed waived. Pursuant to the Order of the Supreme Court, dated December 3, 1992, a judgment in the amount of $2,500.00 for sanctions should be entered in favor of Janet Knedlik to be paid by Will Knedlik.

[seal]

IN TESTIMONY WHEREOF, I have hereunto set my hand and

affixed the seal of said court at Olympia, this 26th day of January, 1993.

/s/ C. J. Merritt
C.J. MERRITT
Clerk of the Supreme Court,
State of Washington

cc: Mr. Will Knedlik
Mr. David Schiffrin
Mr. Henry Hanssen
Ms. Catherine Smith